UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MISSOURI EASTERN DIVISION

JERRY LEE FROELKER,)	
Plaintiff,)	
V.)	No. 4:08-CV-1685 CAS
FRANKLIN COUNTY, et al.,)	
Defendants.)	

ORDER

This matter is before the Court on review of the file following transfer to the undersigned.

The named defendants have filed answers. Plaintiff has also sued two defendants identified as John

Doe #1 and John Doe #2.

In general, it is impermissible to name fictitious parties as defendants. <u>Phelps v. U.S. Fed. Gov't</u>, 15 F.3d 735 (8th Cir.), <u>cert. denied</u>, 511 U.S. 1114 (1994). Nonetheless, "an action may proceed against a party whose name is unknown if the complaint makes allegations specific enough to permit the identity of the party to be ascertained after reasonable discovery." <u>Estate of Rosenberg by Rosenberg v. Crandell</u>, 56 F.3d 35, 37 (8th Cir. 1995) (quoting <u>Munz v. Parr</u>, 758 F.2d 1254, 1257 (8th Cir. 1985)). In such a case, rather then dismissing a claim, a court should order the disclosure of the John Doe party's identity by other defendants named and served, or permit the plaintiff to identify the person through discovery. Munz, 758 F.2d at 1257.

Plaintiff's allegations in this case against the two Doe defendants are specific enough to permit them to be identified. Plaintiff alleges that John Doe #1, a deputy sheriff, sprayed him with pepper spray on February 27, 2004 while plaintiff was in a holding cell at the Franklin County Jail, and that

John Doe #2, a deputy sheriff, aided and abetted John Doe #1 by shackling and binding plaintiff so that John Doe #1 could spray him with pepper spray. The named defendants will be ordered to disclose the identities of the Doe defendants.

Accordingly,

IT IS HEREBY ORDERED that defendants Franklin County, Gary Toelke and Bruce Gerard shall file a Memorandum stating (1) the names of the two individuals sued in this matter as John Doe #1 and John Doe #2, and (2) whether they are still employed by Franklin County, Missouri, by July 15, 2009.

CHARLES A. SHAW

UNITED STATES DISTRICT JUDGE

Dated this 30th day of June, 2009.